

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Richard E. Vogel
For: CONFECTION CUP ASSEMBLY
Serial No.: 09/681,099 Examiner: Joseph C. Merek
Filed: January 4, 2001 Group Art Unit: 3727
Atty. Docket: 70254-328 Confirmation No.: 8152

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| CERTIFICATE OF MAILING/TRANSMISSION (37 CFR 1.8(a)) | |
| I hereby certify that this correspondence is, on the date shown below, being: | |
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| <input checked="" type="checkbox"/> transmitted by facsimile to the Patent and Trademark Office to Examiner Merek at Technology Center 3700 at (703) 872-9306. | |
|  Signature | |
| Date: November 1, 2004 | Andrea R. Jacobson (type or print name of person certifying) |

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

RESPONSE TO NOTIFICATION OF NON-COMPLIANCE

In response to the Notification of Non-Compliance mailed September 30, 2004, regarding the form of the Applicants' Appeal Brief filed June 9, 2004, attached is a Second Amended Appeal Brief. The brief is submitted via facsimile and in triplicate via Express Mail.

Applicants note that even though new rules for appeal briefs under 37 C.F.R. § 41.37 ("the new rules") took effect on September 13, 2004, the current amended appeal brief can still be filed under the prior rules of 37 C.F.R. § 1.192 ("the old rules") since the original appeal brief was filed before September 13, 2004. Support for the applicability of the old rules in this instance is found at paragraph 6 of the *Clarification of the Effective Date Provision in the Rules of Practice before the Board of Patent Appeals and Interferences* published on the USPTO's web site at:
<http://www.uspto.gov/web/offices/pac/dapp/ola/preognitice/bpai91304.pdf>

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It is respectfully submitted that the new Appeal Brief complies with all of the requirements of 37 CFR 1.192(c). For completeness, the action taken by Applicant to address each assertion of non-compliance is summarized below:

1. The Examiner asserted that in Issue I claim 29 was improperly grouped with claim 28.

Applicants agree and revised the grouping such that claim 29 now stands alone. Separate arguments for patentability were added for claim 29.

It is respectfully submitted that the new Appeal Brief conforms with the requirements of 37 CFR 1.192(c). If there are any questions, please contact the undersigned attorney.

Respectfully submitted,

Dated: 11/11/04

By: M. A. D.

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